

No. 1-12-3427

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MORTGAGE ELECTRONIC REGISTRATION)	Appeal from the
SYSTEMS, INC., on behalf of and as nominee for)	Circuit Court of
DEUTSCHE BANK NATIONAL TRUST CO., as)	Cook County.
Successor trustee to NEW CENTURY MORTGAGE)	
CORPORATION,)	
)	
Plaintiff-Counter Defendant-Appellant,)	
)	
v.)	
)	
ERIC WEST and SHERRY WEST,)	No. 08 CH 17814
)	
Defendants-Counter Plaintiffs-Appellees,)	
)	
and)	
)	
UNKNOWN OWNERS and NON-RECORD)	
CLAIMANTS,)	Honorable
)	Mathias W. Delort,
Defendants.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it denied a motion for reconsideration that raised a new argument, without any explanation for the party's failure to raise the argument before the initial judgment.

¶ 2 This case involves the scope of motions for reconsideration. The trial court entered a judgment in favor of Eric and Sherry West on a counterclaim they filed against Mortgage Electronic Registration Systems (MERS), and the court scheduled a hearing on damages. MERS filed no response to the Wests' brief on damages. The trial court granted the Wests the damages they sought. MERS then filed a motion for reconsideration, raising a new argument concerning the award of damages. The trial court denied the motion for reconsideration. We hold that because MERS sought to use a motion for reconsideration to raise a new argument, without any explanation for its failure to raise the argument before the trial court ruled on damages, the trial court did not abuse its discretion when it denied the motion for reconsideration. Accordingly, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 In 2006, New Century Mortgage Corporation loaned the Wests \$188,100, with the loan secured by a mortgage on the Wests' property in Calumet City. MERS, on behalf of Deutsche Bank National Trust, sued to foreclose the mortgage in 2008. MERS alleged that Deutsche Bank legally owned the mortgage as successor to New Century. The Wests filed a counterclaim, alleging that New Century violated the Truth in Lending Act (Act) (15 U.S.C. § 1601 *et seq.*), because the documents accompanying the mortgage did not sufficiently specify the due dates for periodic

payments under the mortgage. See 12 C.F.R. § 226.18. MERS admitted that New Century provided to the Wests the statement that did not specify due dates for most payments.

¶ 5 The Wests moved for summary judgment on the counterclaim. MERS contended that the statement complied with the Act because the debtor could infer the due dates from the statement. The trial court granted the Wests' motion for summary judgment on liability and continued the matter for determination of damages and attorney's fees. The Wests sought the statutory maximum of \$4,000 in damages, plus more than \$15,000 in attorney's fees. Their attorney filed an affidavit listing the actions his firm took and the time each attorney spent on the actions listed.

¶ 6 On January 24, 2012, the trial court granted MERS's motion to voluntarily dismiss the foreclosure claim. MERS moved to strike the petition for attorney's fees for lack of adequate specificity for the charges. MERS also requested an extension of time to respond to the request for damages. The trial court refused to strike the fee petition, but the court granted MERS the extension of time it sought for responding to both the fee petition and the request for damages.

¶ 7 When MERS failed to respond by the extended deadline, on July 13, 2012, the trial court entered an order awarding the Wests \$4,000 in damages. The court held that the Wests' attorney overstated the reasonable rate for his work and the work of his associate. The court found \$350 per hour appropriate for lead counsel, and \$200 per hour appropriate for his associate. The court set the fee petition for further hearing.

¶ 8 The Wests submitted a revised fee petition, seeking almost \$13,000 in fees. Rather than filing a response to the fee petition, MERS filed a motion to reconsider the award of statutory damages for the violation of the Act. In the motion for reconsideration, MERS argued, for the first

time, that its voluntary dismissal of the foreclosure claim defeated the Wests' statutory right to recover for the violation of the Act, because the Act permitted an award of damages, at least in the circumstances of the Wests' counterclaim, only as a setoff against an award to the lender.

¶ 9 The trial court denied the motion for reconsideration. The court found that many of the billing entries supporting the fee petition reflected work on the defense of the foreclosure suit rather than the claim under the Act. The court limited the fee award to work on the claim under the Act, ultimately awarding the Wests \$8,386.67 in attorney's fees and \$319 in costs in addition to \$4,000 in damages. MERS now appeals.

¶ 10 ANALYSIS

¶ 11 MERS argues that the trial court erred when it denied MERS's motion for reconsideration of the award of damages. The Wests answer that the trial court correctly denied the motion for reconsideration because MERS improperly used the motion for reconsideration to raise new arguments. We review the ruling on a motion for reconsideration for abuse of discretion. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409 (2005); *Greer v. Yellow Cab Co.*, 221 Ill. App. 3d 908, 915 (1991).

¶ 12 Parties should not raise new legal theories or factual arguments in motions for reconsideration. *River Plaza Homeowners Ass'n v. Healey*, 389 Ill. App. 3d 268, 280 (2009); *North River Insurance Co. v. Grinnell Mutual Reinsurance Co.*, 369 Ill. App. 3d 563, 572 (2006). "Trial courts should not allow litigants to stand mute, lose a motion and then frantically gather evidentiary material to show that the court erred in its ruling." *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (1991) (quoted in *Landeros v. Equity Property & Development*,

321 Ill. App. 3d 57, 65 (2001)). While the trial court has discretion to consider new matters on a motion for reconsideration, the court usually should not permit a party to raise a new argument in such a motion unless the party provides a reasonable explanation for the failure to present the argument prior to the original ruling. *Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183, 195 (1989).

¶ 13 MERS has not provided any excuse for its failure to raise its argument about the limitation on relief under the Act prior to the court's ruling on the Wests' requests for damages. MERS stood mute, filing no response to the request for damages despite the court's extension of the time to respond, and presented a brand new legal theory in its motion for reconsideration. Due to the misuse of the motion for reconsideration to raise a new argument, we cannot say that the trial court abused its discretion when it denied the motion for reconsideration. Accordingly, we affirm the judgment entered in favor of the Wests, including the award of attorney's fees. We remand the matter to the trial court for determination of whether to award the Wests attorney's fees for their defense of this appeal.

¶ 14 Affirmed and remanded.